

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company)	
)	
)	
Petition for approval of tariffs implementing)	06-0411
ComEd's proposed residential rate stabilization)	
program)	
)	

**THE PEOPLE OF THE STATE OF ILLINOIS' REPLY
IN SUPPORT OF MOTION TO DISMISS**

The People of the State of Illinois ("the People"), by and through the Illinois Attorney General Lisa Madigan, file this Reply, pursuant to 83 Ill. Admin. Code § 200.190(e) and the Administrative Law Judge's June 20, 2006 Order in this docket. This Reply addresses the Responses filed on July 5, 2006 by Commonwealth Edison Company ("ComEd") and the Staff of the Illinois Commerce Commission ("Staff"). The Responses do not refute the fundamental point of the People's Motion to Dismiss: the Illinois Commerce Commission ("ICC" or "Commission") should dismiss ComEd's petition because it fails to comply with Section 9-201 of the Public Utilities Act ("PUA"). 220 ILCS 5/9-201. The Responses also fail to show that the standard information requirements in 83 Ill. Admin. Code § 285 do not apply in this case.

I. The ICC should dismiss ComEd's petition because it fails to comply with Section 9-201 of the Public Utilities Act.

ComEd and Staff contend that ComEd's petition, with attached tariff sheets, is an appropriate filing under PUA Section 9-201. 220 ILCS 5/9-201. ComEd Response at 2-5; Staff Response at 2-4. The People agree – but only to the extent that such a petition is filed in a “pass to file” case.¹ However, this is clearly not a “pass to file” case. Indeed, this matter has been set for formal hearings to determine whether the proposed rate increase is just and reasonable. Consequently, ComEd's petition must be dismissed because the Commission lacks statutory authority to find a tariff that has not been filed to be just and reasonable.

A. The statute requires a tariff on file before the Commission can make a finding of justness and reasonableness.

ComEd asks the Commission to deny the People's Motion to Dismiss because “Section 9-201 . . . makes plain that the ‘file and suspend first’ process is not statutorily exclusive.” ComEd Response at 3. Staff similarly asserts that “the procedure of seeking Commission approval of tariffs, or tariff revisions, via petition is consistent with Section 9-201 of the Act” Staff Response, at 2. These broad assertions are true only with respect to “pass to file” cases – in which the Appellate Court has held that the Commission may approve a tariff that

¹ “In a traditional rate case under section 9-201 of the Act, the utility asks for a rate change, and the ICC determines whether to suspend the tariff pending a hearing or to let it go into effect. The latter is known as passing a tariff to file, and the rate change goes into effect after 45 days' notice.” A Finkl and Sons Company v. Illinois Commerce Commission, 325 Ill.App.3d 142, 148, 756 N.E.2d 933, 938, 258 Ill. Dec. 659, 664 (2001), citations omitted.

is attached to a petition, but not formally filed. A. Finkl and Sons Company v. Illinois Commerce Commission, 325 Ill.App.3d 142, 756 N.E.2d 933, 258 Ill. Dec. 659 (2001) ("Finkl").

1. Finkl does not apply because the instant case is not a "pass to file" case.

ComEd's broad assertion that tariffs submitted by petition have been "expressly approved by the Courts," is based solely on Finkl. ComEd Response, at 4. ComEd fails to point out that, unlike the instant case, Finkl was a pass to file case. In Finkl "ComEd submitted a petition to allow the attached tariffs to pass to file on less than 45 days' notice" and "[t]he ICC allowed the tariffs to pass to file on less tha[n] 45 days' notice" Finkl, 325 Ill.App.3d at 148, 756 N.E.2d at 938, 258 Ill.Dec. at 664.

The Finkl Court describes a pass to file tariff as follows:

With a pass to file tariff, the ICC does not establish rates, exercise control over the rates, or go beyond fact gathering; instead it merely allows the rates to go into effect.

Finkl, 325 Ill.App.3d at 150, 756 N.E.2d at 939, 258 Ill.Dec. at 665.

Pass to file tariffs are authorized by PUA Section 901(a), which provides that tariffs go into effect automatically at the end of the 45-day notice period if the Commission does not take any action during that time period. That is, in a pass to file case, the Commission makes no determination as to the justness or reasonableness of the proposed rate.

2. There are no provisions in the PUA authorizing the Commission to make a “just and reasonable” finding when there is no tariff on file.

In the instant case, ComEd has asked the Commission to find that Rider-RRS, conforming revisions to other tariffs and the charges established under them are “just and reasonable.” ComEd Petition at 6. The Commission does not have statutory authority to do this through the pass to file approach. “A decision to pass a tariff to file or suspend rates, pursuant to Section 9-201(a), is not a formal inquiry into the propriety of the rates as in a formal hearing under section 9-201(b).” Finkl, 325 Ill.App.3d at 151, 756 N.E.2d at 940, 258 Ill.Dec. at 666.

The Commission’s authority to determine whether a proposed tariff is just and reasonable is set forth in PUA Sections 9-201(b) and(c). 220 ILCS 5/9-201 (b) and (c). Section 901(b) requires the Commission to hold formal hearings on proposed tariffs that are not passed to file and to suspend those proposed tariffs during the hearing process:

Whenever there shall be filed with the Commission any schedule stating an individual or joint rate or other charge . . . the Commission shall have power, and it is hereby given authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleadings by the interested public utility or utilities, but upon reasonable notice, **to enter upon a hearing concerning the propriety of such rate or other charge . . . and pending the hearing and decision thereon, such rate or other charge . . . shall not go into effect.** The period of suspension of such rate or other charge . . . shall not extend more than 105 days beyond the time when such rate or other charge . . . would otherwise go into effect unless the Commission, in its discretion, extends the period of suspension for a further period not exceeding 6 months.

All rates or other charges . . . not so suspended shall, on the expiration of 45 days from the time of filing the same with the

Commission, or of such lesser time as the Commission may grant, go into effect and be the established and effective rates or other charges . . . subject to the power of the Commission, after a hearing had on its own motion or upon complaint, as herein provided, to alter or modify the same. . . .

220 ILCS 5/9-201(b).

PUA Section 901(c) makes clear that the Commission can enter a finding of justness and reasonableness only after a formal hearing like the hearing process described in Section 901(b):

If the Commission enters upon a hearing concerning the propriety of any proposed rate or other charge . . . the Commission shall establish the rates or other charges . . . proposed, in whole or in part, or others in lieu thereof, which it shall find to be just and reasonable. In such hearing, the burden of proof to establish the justness and reasonableness of the proposed rates or other charges . . . in whole and in part, shall be upon the utility. **No rate or other charge . . . shall be found just and reasonable unless it is consistent with Sections of this Article.**

220 ILCS 5/9-201(c).

Section 901 of the PUA gives the Commission two basic choices:

(1) pass a tariff to file; or (2) suspend the rates and commence formal hearings to determine whether the proposed tariff is “just and reasonable.” The holding in Finkl allows the Commission to pass a tariff to file based on a petition with tariffs attached. However, PUA sections 9-201(b) and(c) clearly contemplate a filed tariff, which the Commission is expressly authorized to suspend, pending hearings to determine whether the proposed tariff is just and reasonable. 220 ILCS 5/9-201 (b) and (c).

There are no provisions in the PUA authorizing the Commission to make a “just and reasonable” finding when there is no tariff on file. Nor have the Courts “expressly approved” tariffs submitted by petition in cases, such as this one, where the Commission is asked to determine whether the proposed “tariff” is just and reasonable. Consequently, ComEd’s petition must be dismissed because the Commission is not authorized to find Rider-RRS just and reasonable in the absence of a filed tariff.

B. The People’s right to challenge the Commission’s authority to approve ComEd’s petition in this case is not waived because the People did not do so in other ICC dockets.

Staff suggests that the People’s failure to raise this issue in a 2001 case before the Commission somehow waives the People’s right to do so now. Staff Response, at 4. ComEd also notes that the People did not raise this issue in three cases where a utility attached tariffs to a petition. ComEd Response, at 5. These observations are irrelevant.

The People’s right to challenge the Commission’s authority to approve ComEd’s petition is not waived because the People did not do so in other ICC dockets. The failure to challenge the procedures used in prior cases does not amount to an endorsement of those procedures, and the People are certainly not barred from challenging a practice in one case by their decision not to challenge it in another case. Indeed, neither Com Ed nor Staff cites any authority for the proposition that a party

must raise a particular objection in every case in order to raise it in *any* case.

II. Part 285 is Applicable to this case.

ComEd and Staff contend that the standard information requirements in 83 Ill. Admin. Code § 285 (“Part 285”) do not apply in this case because the proposed “tariffs” do not increase rates (Staff Response at 5) and/or do not increase ComEd’s total revenues by 1% or more over prior rates (ComEd Response at 6-7.) That is wrong on two counts. The Part 285 requirement applies in this case because the proposed “tariff” would result in at least a 1% increase in ComEd’s annual revenue generated by “the applicable service for which the utility is seeking a rate change” 83 Ill. Admin. Code § 120(a). In addition, the standard information requirements also apply because ComEd’s “cumulative filings, including the current filing, over the previous 12 month period would increase revenues by 1% or more.” *Id.*

A. ComEd’s revenues would increase by at least \$ 160 – 210 million from 2010 to 2012 under the proposed rate stabilization plan.

Staff asserts that Part 285 requirements do not apply in this case because “the tariff sheets for Rider RRS do not represent a rate increase.” Staff Response, at 5. Staff’s undocumented assertion is incorrect. On July 11, 2006, the People filed expert testimony in this docket which shows that ComEd’s revenues would increase by at least an additional \$160 - \$210 million in 2010 through 2012 if the rate stabilization plan

were implemented. AG Exhibits 1.0 – 1.9, Direct Testimony of Scott J. Rubin.

ComEd asserts that Part 285 requirements do not apply in this case because the proposed tariffs will not increase annual revenues by 1% or more. ComEd Response, at 6 – 7. ComEd’s undocumented assertion is also incorrect. The rate stabilization proposal applies only to residential customers. According to Exelon’s 10-K for 2005, ComEd’s total operating revenue for residential service was \$2.584 billion. Exelon 2005 10-K, filed Feb. 15, 2006, at 100; See Appendix A. The rate stabilization proposal would increase residential revenues by an average of \$53 million to \$70 million per year from 2010-2012, which is considerably more than 1% of revenues from residential service in those years. AG Exhibits 1.0 – 1.9, Direct Testimony of Scott J. Rubin.

B. ComEd must file the standard information required under Part 285 because the proposed “tariff” would increase revenues from residential ratepayers by more than 1%.

ComEd states that “83 Ill. Admin. Code § 120(a) provides that the standard information requirements are applicable only to tariffs that increase a utility’s total annual revenues by 1% or more over the prior rates.” ComEd Response, at 6. That is, at best, an incomplete summary of this rule. In fact, 83 Ill. Admin. Code § 120(a) also provides that standard information requirements are also applicable in cases where a

tariff would increase revenues from “the applicable service for which the utility is seeking a rate change” by 1% or more.²

In this case, residential service is “the applicable service for which the utility is seeking a rate change.” As noted above, ComEd’s “rate stabilization” plan would increase residential revenues by an average of \$53 million to \$70 million per year from 2010-2012, which is considerably more than 1% of revenues from residential service in those years. Hence, it is clear that ComEd must file the standard information required under Part 285 in this case, if the petition is not dismissed on other grounds.

C. ComEd must file the standard information required under Part 285 because ComEd’s cumulative filings, including the current filing, over the previous 12 month period would increase revenues by 1% or more.

ComEd’s request to raise residential rates through a “rate stabilization” plan comes on top of ComEd’s recent requests to raise rates for electric service (ICC docket no. 05-0159) and delivery service (ICC docket no. 05-0597) substantially in excess of 1%. The proposed delivery service tariffs under review in ICC docket no. 05-0597 were filed on August 31, 2005. See Appendix B. ComEd filed an application for approval of the delivery service tariffs with the Commission on September 14, 2005. *Id.*

² 83 Ill. Admin. Code § 120(a) states, in relevant part: “If certain rates are not to be changed by the utility’s request, revenues resulting from the application of those rates are to be included in the comparison, provided that the rates that are not changing are a component of the applicable service for which the utility is seeking a rate change.”

The incomplete summary of 83 Ill. Admin. Code § 120(a) that appears in ComEd's response at pages 6 - 7 fails to mention that this rule states that "[t]he standard information requirements are also applicable to increases of less than 1% if cumulative filings, including the current filing, over the previous 12 month period would increase revenues by 1% or more." 83 Ill. Admin. Code § 120(a). ComEd's request for an increase in delivery service rates, ICC docket no. 05-0597, was filed within the previous 12 month period. In that case ComEd seeks a rate increase that would increase ComEd's revenues substantially in excess of 1%. Proposed Order, docket no. 05-0597, at 303 (June 8th 2006). Consequently, the Part 285 information requirements would apply in this case even if the proposed "rate stabilization" plan were to increase ComEd's revenues by less than 1%.

WHEREFORE, the People respectfully request that the Commission dismiss ComEd's Petition because it fails to make a request upon which relief can be granted and because ComEd failed to comply with 220 ILCS 5/9-201 and failed to comply with the standard information requirements under 83 Ill. Admin. Code § 285.

Respectfully Submitted,
The People of the State of Illinois

By LISA MADIGAN, Attorney General

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July 12, 2006

APPENDIX A

10-K 1 d10k.htm FORM 10-K

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

FORM 10-K

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the Fiscal Year Ended December 31, 2005

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

Commission File Number	Name of Registrant; State of Incorporation; Address of Principal Executive Offices; and Telephone Number	IRS Employer Identification Number
1-16169	EXELON CORPORATION (a Pennsylvania corporation) 10 South Dearborn Street—37 th Floor P.O. Box 805379 Chicago, Illinois 60680-5379 (312) 394-7398	23-2990190
1-1839	COMMONWEALTH EDISON COMPANY (an Illinois corporation) 440 South LaSalle Street Chicago, Illinois 60605-1028 (312) 394-4321	36-0938600
000-16844	PECO ENERGY COMPANY (a Pennsylvania corporation) P.O. Box 8699 2301 Market Street Philadelphia, Pennsylvania 19101-8699 (215) 841-4000	23-0970240
333-85496	EXELON GENERATION COMPANY, LLC (a Pennsylvania limited liability company) 300 Exelon Way Kennett Square, Pennsylvania 19348 (610) 765-6900	23-3064219

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Name of Each Exchange on Which Registered
EXELON CORPORATION: Common Stock, without par value	New York, Chicago and Philadelphia
PECO ENERGY COMPANY: Cumulative Preferred Stock, without par value: \$4.68 Series, \$4.40 Series, \$4.30 Series and \$3.80 Series	New York

<http://www.sec.gov/Archives/edgar/data/22606/000119312506032686/d10k.htm>

7/12/2006

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Electric Revenue	2005	2004	Variance	% Change
Full service ^(a)				
Residential	\$2,584	\$2,295	\$ 289	12.6%
Small commercial & industrial	1,671	1,649	22	1.3%
Large commercial & industrial	408	380	28	7.4%
Public authorities & electric railroads	132	126	6	4.8%
Total full service	4,795	4,450	345	7.8%
PPO ^(b)				
Small commercial & industrial	385	274	111	40.5%
Large commercial & industrial	345	304	41	13.5%
	730	578	152	26.3%
Delivery only ^(c)				
Small commercial & industrial	95	128	(33)	(25.8%)
Large commercial & industrial	156	204	(48)	(23.5%)
	251	332	(81)	(24.4%)
Total PPO and delivery only	981	910	71	7.8%
Total electric retail revenues	5,776	5,360	416	7.8%
Wholesale and miscellaneous revenue ^(d)	488	443	45	10.2%
Total operating revenues	\$6,264	\$5,803	\$ 461	7.9%

(a) Full service revenue reflects deliveries to customers taking electric service under tariffed rates, which include the cost of energy and the cost of the transmission and the distribution of the energy.

(b) Revenues from customers choosing the PPO include an energy charge at market rates, transmission and distribution charges, and a CTC.

(c) Delivery only revenues reflect revenue under tariff rates from customers electing to receive generation service from an alternative electric supplier, which includes a distribution charge and a CTC. Prior to ComEd's full integration into PJM on May 1, 2004, ComEd's transmission charges received from alternative electric suppliers were included in wholesale and miscellaneous revenue.

(d) Wholesale and miscellaneous revenues include transmission revenue (including revenue from PJM), sales to municipalities and other wholesale energy sales.

APPENDIX B

<http://eweb.icc.state.il.us/e-docket:>

ILLINOIS COMMERCE COMMISSION
Docket Details Report in 05-0597 for 7/12/2006

Date Filed: 09/14/2005 **Suspension Date:** 01/27/2006 **Resuspension Date:** 07/27/2006

Case Type: Rate General Increase (9-201)
Service Type(s): Electric
Case Status: Initial — Proposed Order
Examiner(s): Glennon P. Dolan,
Katina Haloulos
Title of Case: Commonwealth Edison Company
Nature of Case: Proposed general increase in rates for delivery service. (Tariffs filed on August 31, 2005)
Companies: Commonwealth Edison Company

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ILLINOIS COMMERCE COMMISSION

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NOTICE OF FILING

PLEASE TAKE NOTICE that on July 12, 2006 the People of the State of Illinois filed the People of the State of Illinois' Reply in Support of Motion to Dismiss in the above-captioned proceeding via e-Docket with the Chief Clerk of the Illinois Commerce Commission at 527 E. Capitol Avenue, Springfield, Illinois 62701.

_____/s/_____
Susan Hedman
Senior Assistant Attorney General

CERTIFICATE OF SERVICE

I, Susan Hedman, hereby certify that the foregoing documents, together with this Notice of Filing and Certificate of Service, were sent to all parties of record listed on the attached service list by e-mail on July 12, 2006. Paper copies will be provided upon request.

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